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10/774,339	02/06/2004	Eugene A. Helmsie	60,137-207;136-3032-U	5319
83074 7590 03/01/2011 Carlson, Gasky & Olds/Masco Corporation 400 West Maple Road Suite 350 Birmingham, MI 48009				
EXAMINER				
LE, HUYEN D				
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/774,339
Filing Date: February 06, 2004
Appellant(s): HELMETSIE ET AL.

Timothy C. Bradley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/06/2010 appealing from the Office action mailed 07/09/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 18 and 21-33.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2,036,184	ARMSTRONG	9-1935
1,059,184	HINE	4-1913
4,718,131	KITAMURA et al.	1-1988

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 18, 21-27, 30 and 33 stand rejected under 35 U.S.C. 102(b) as being anticipated by Armstrong (2,036,184).

Regarding claim 18, the Armstrong reference discloses a surround comprising a base portion (a floor portion of a room); a first wall portion (the left wall of the room); a second wall portion (the right wall of the room); and a corner portion (formed by the meeting portions of the walls including member 1) engaged with the base portion, the first wall portion and the second wall portion, the corner portion comprising a multiple of horizontal shelf slots (spaces between members 8,9 and 10) arranged vertically along a length of the corner portion, wherein the horizontal shelf slots comprise blind openings of uniform height that extends into the corner portion to support a corresponding

shelves 18 and 19, wherein the base receives the first wall portion and the second wall portion and the corner portion.

The introductory statement of the intended use have been carefully considered but deemed not to impose any structural limitations on the claim(s) distinguishable over the device of Armstrong which is capable of being used in a bathroom or shower surround.

Regarding to claim 21, at least one of the horizontal shelf slots is defined by a top wall portion 8, a bottom wall portion 9, rear wall portion 1, and an open front end.

Regarding claim 22, one of the horizontal shelf slots includes a uniform nominal depth extending into the corner portion.

Regarding claim 23, each of the horizontal shelf slots is adapted to support one of the corresponding multiple of shelves.

Regarding claim 24, the corner portion, the top wall portion 8, the bottom wall portion 9, the arcuate rear wall portion 1 comprise a single continuous piece (when assembled together).

Regarding claim 30, the surround comprises a top rim (the ceiling of a room) engageable with the corner, the first wall and second wall portions.

Regarding claim 33, the horizontal slots forms protrusions 8,9,10 on the rear side of the corner portion.

2. Claim 28 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong in view of Hine (1,059,464).

Although Armstrong does not disclose multiple segments of the shelf slots arranged horizontally, attention is directed the Hine reference which teaches a shelf structure comprising multiple segment shelf slots (between projections) arranged horizontally. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ slots formed between projections as taught by Hine on the Armstrong shelf device (in place of blocks 16) for accommodating different sizes of shelves.

3. Claim 29 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong in view of Kitamura et al. (4,718,131).

Although Armstrong does not disclose the base portion (bottom wall) having a flange extending from the base portion, attention is directed to the Kitamura et al. reference which teaches a bottom wall R2 of a bathroom having a flange extending therefrom (see flange on the left side of floor R2 in Fig. 18). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ Armstrong shelf device in a room having a bottom wall with a flange extending therefrom in view of the teaching of Kitamura et al., wherein doing so would be an obvious design choice.

(10) Response to Argument

102(b) Rejection over Armstrong

Appellant argues that the floor of Armstrong does not receive wall portions 12 and a corner portion 8 as required by claim 18. There have been misinterpretations of the wall portions and the corner portion. The wall portions and the corner portion are not

parts 12 and 8 of the shelf. In this case, the wall portions are the walls of a room and the corner portion is the corner of the room formed by the two walls meeting each other in Armstrong. The bracket 1 attached to the corner would be a part of the corner portion. The meeting walls and the corner of the room sit on the floor. Therefore, the wall and the corner would be "received" by the floor.

Appellant argues with respect to claim 21 that Armstrong does not disclose a top wall. The open-ended shelf unit lacks a top wall. Examiner disagrees with appellant. Claim 21 requires a top wall in a shelf slot. The top wall of the slot is defined by the bottom surface of member 8.

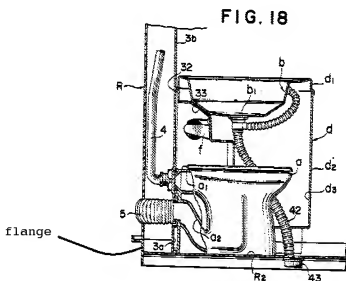
Appellant argues that Armstrong illustrates the corner portion and the walls being separate pieces which are not a single continuous piece as claimed. Examiner disagrees with appellant. Since the claim does not specifically recite "a single, continuous piece" of all walls and the corner portion being one integral molded piece. The corner portion and the top, bottom and rear walls of the slot in Armstrong after being assembled or fastened together meet the claimed limitation as "a single, continuous" piece.

103(a) Rejection over Armstrong in view of Hine

Appellant argues that the horizontal shelf slots of Armstrong are merely elongated spaces between members 8, 9 and 10, it would not be possible to add additional segments that are horizontally arranged as claimed. Examiner disagrees with appellant. The shelves 18 and 19 of Armstrong can be supported by the horizontal spaced slots as taught by Hine by replacing the blocks 16 of Armstrong with lugs 13 of

Hine while keeping the slots between members 8 and 9 and 10 in the back of the bracket 1.

Appellant argues that the flange of Kitamura does not extend from a base R2 as claimed. Examiner disagrees with appellant. Figs. 1, 3, 4, 15 and 18 show the flange being part of the floor R2 of the room unit R.



(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Huyen Le/

Primary Examiner, Art Unit 3751

Art Unit: 3751

Conferees:

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